

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JAMES R. PRINCE,  
Petitioner,

-v-

KENNETH D. KYLER, et al.,  
Respondents.

CIVIL ACTION

NO. 1:CV-00-1181

FILED  
SCRANTON (Judge Kane)

AUG - 3 2001 (Magistrate Judge Blewitt)

PER

DEPUTY CLERK

OBJECTIONS TO MAGISTRATE'S REPORT & RECOMMENDATION

The Petitioner, James R. Prince files the instant objections to this Court's Report and Recommendation (R&R) filed July 6, 2001 upon leave of court and states:

1. The Magistrate's finding that the "additional state court proceedings [which] took place after the March 19, 1998, date" did not operate to toll 28 U.S.C. §2244(d)(2), as they would not have been considered "properly filed" is simply not supported by the record, where the Court of Common Pleas, Lycoming County, denied the application to reinstate appeal rights without prejudice to the petitioner's right to file same in the Superior Court: and without a finding that the application was improper. R&R at 6. (DOC. 16, EXH. 12).

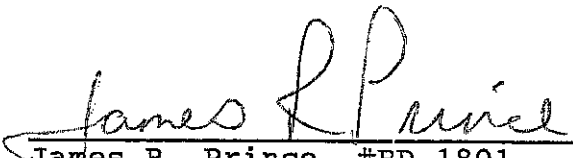
2. On appeal to Superior Court a panel ruled upon the merit of the question presented without finding the application was improper. (DOC. 16, EXH. 15).

3. The matter was timely presented to the Pennsylvania Supreme Court which denied allocatur as a matter of due course without opinion. (DOC. 16, EXH. 17).

4. Petitioner avers that the AEDPA limitations period began to run from the effective date on April 24, 1996 and was tolled on June 10, 1996 (a period of 47 days) when Petitioner filed his state PCRA action. (DOC. 16, EXH. 3). It began to run again on March 19, 1998, thirty days after the Superior Court dismissed the appeal for failure to file a brief, (R&R at 7), and was again tolled on June 2, 1998 (a period of 75 days), when his application to reinstate appeal rights was filed. R&R at 6. The time limitations did not begin to run against Petitioner until February 17, 2000 when his Petition for Allowance of Appeal was denied by the Pennsylvania Supreme Court, (DOC. 16, EXH. 17), and the limitations period came to an end on June 29, 2000 (a period of 132 days) when Petitioner filed the instant habeas action. Accordingly, 111 days remained under the AEDPA limitations period, and the underlying habeas petition was timely filed.

Respectfully submitted,

Date: 7/31/01

  
James R. Prince, #BD-1801  
1100 Pike Street, SCI-Huntingdon  
Huntingdon, PA 16654-1112

FILED  
SCRANTON

AUG - 3 2001

*Signed  
Original*

PER *J* **CERTIFICATE OF SERVICE**  
DEPUTY CLERK

Under the penalties provided for within 28 U.S.C. §1746, I hereby certify that I hand-delivered the foregoing document(s):

OBJECTIONS TO MAGISTRATE'S REPORT AND RECOMMENDATION,  
and MEMORANDUM OF LAW IN SUPPORT

to prison officials at SCI-Huntingdon, on this 31st day of July, 2001, via first class prepaid postage, and addressed to the following person(s) based on the prisoner mail-box rule:

✓ Clerk of Court (ORIGINAL & THREE COPIES)  
U.S. District Court (M.D. Pa.)  
235 N. Washington Avenue  
P.O. Box 1148  
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